

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SCHNADER, HARRISON, SEGAL &	:	CIVIL ACTION
LEWIS, LLP	:	
	:	
v.	:	
	:	
BASIC CAPITAL FUNDS, INC., <u>et al.</u>	:	NO. 99-4655

MEMORANDUM AND ORDER

BECHTLE, J. SEPTEMBER , 2000

Presently before the court is defendant Basic Capital Funds, a Limited Partnership's Motion to Dismiss Plaintiff's Amended Complaint and plaintiff Schnader, Harrison, Segal & Lewis, LLP's response thereto. For the reasons set forth below, the court will deny the motion.

I. BACKGROUND

On September 16, 1999, Schnader, Harrison, Segal & Lewis, LLP ("Schnader") commenced this action against Basic Capital Funds, Inc. ("Basic Capital") seeking payment for legal services rendered in connection with the preparation of an initial public offering of a real estate investment trust. (Def.'s Mem. of Law in Supp. of Mot. to Dismiss Pl.'s Am. Compl. at 1.) In its Answer to the Complaint, Basic Capital denied that it was Schnader's client and alleged that legal services were actually rendered to other entities.¹ Id. On January 18, 2000, Schnader

¹ Specifically, Basic Capital asserts that Schnader's clients were Basic U.S. REIT, Inc. ("U.S. REIT") and Basic

(continued...)

filed its Amended Complaint to include U.S. REIT, Advisors and Basic Capital Funds, a Limited Partnership ("Basic Capital LP") as defendants.²

In its Amended Complaint, Schnader asserts that it was retained by both Basic Capital LP and Basic Capital, and that it rendered services on their behalf from March 1996 until December 2, 1997. (Am. Compl. First Count, Second Count, Tenth Count, Eleventh Count & Twelfth Count; Pl.'s Resp. to Def.'s Mot. to Dismiss Am. Compl. at 3.) Schnader received \$82,000.00 in partial payment of its services and seeks to recover the amounts still owed for those services. (Pl.'s Resp. to Def.'s Mot. to Dismiss Am. Compl. at 3.)

On February 23, 2000, Basic Capital LP filed the instant motion to dismiss the Amended Complaint for lack of personal jurisdiction. For the reasons set forth below, the court will deny the motion.

¹(...continued)
Advisors, Inc. ("Advisors"). (Def.'s Mot. to Dismiss Pl.'s Am. Compl. ¶¶ 7-8.) U.S. REIT is a Maryland corporation. (Am. Compl., Fourth Count ¶ 2.) Advisors is a Delaware corporation. (Am. Compl., Seventh Count ¶ 2). Both corporations are no longer in good standing. (Pl.'s Resp. to Def.'s Mot. to Dismiss Am. Compl. ¶ 5.)

² Basic Capital LP is an Ontario limited partnership. (Def.'s Mem. of Law in Supp. of Mot. to Dismiss Pl.'s Am. Compl. at 2.) Its general partner is Basic Capital, an Ontario corporation. (Pl.'s Res. to Def.'s Mot. to Dismiss Am. Compl. at 1.) Ronald Bernbaum is the president of Basic Capital and made an affidavit on Basic Capital LP's behalf. (Bernbaum Decl. at 1.)

II. LEGAL STANDARD

For the purposes of a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in a plaintiff's complaint, construe the complaint in the light most favorable to the plaintiff, and determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988). The court may also consider "matters of public record, orders, exhibits attached to the Complaint and items appearing in the record of the case." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994) (citations omitted). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (citations omitted). A complaint is properly dismissed only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

III. DISCUSSION

Basic Capital LP asserts that under Federal Rule of Civil Procedure 12(b)(2), it has insufficient contacts with Pennsylvania to justify the exercise of personal jurisdiction in this forum. Basic Capital LP contends that it does not maintain offices, own real estate, advertise or have any presence within the Commonwealth. (Def.'s Mem. of Law in Supp. of Mot. to

Dismiss Pl.'s Am. Compl. at 2.) Basic Capital LP also asserts that the Amended Complaint merely pleads the conclusory allegation that legal services were rendered to it based upon letters addressed to Basic Capital. Basic Capital LP further contends that Basic Capital was not acting on its behalf in allegedly retaining Schnader. Id.

In a case based upon diversity jurisdiction, Federal Rule of Civil Procedure 4(e) "gives a federal court personal jurisdiction over non-resident defendants to the extent permissible under the state law of the jurisdiction where the court sits." Grand Entertainment Group, Ltd. v. StarMedia Sales, Inc., 988 F.2d 476, 481 (3d Cir. 1993). Under Pennsylvania's long-arm statute, jurisdiction may be exercised "to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 Pa. Con. Stat. Ann. § 5322(b). An analysis of the constitutional limitations on personal jurisdiction involves a two prong test, including inquiries into minimum contacts and fair play and substantial justice. Asahi Metal Indus. Co. v. Superior Court of California, Solano County, 480 U.S. 102 (1987). The court will review each prong separately.

1. Minimum Contacts

When a defendant raises the defense of lack of personal jurisdiction, the plaintiff has the burden of establishing sufficient facts to show that jurisdiction is proper. Carteret

Sav. Bank v. Shushan, 954 F.2d 141, 146 (3d Cir. 1992). A plaintiff meets this burden by "establishing with reasonable particularity sufficient contacts between the defendant and the forum state." Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992) (citations and internal quotations omitted). In Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985), the Supreme Court stated that:

[j]urisdiction is proper . . . where the contacts proximately result from actions by the defendant himself that create a "substantial connection" with the forum state. . . . Thus where the defendant "deliberately" has engaged in significant activities within a State . . . or has created "continuing obligations" between himself and residents of the forum . . . he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws, it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

Id. at 475-76.

Clinton Stuntebeck is a senior partner at Schnader who worked on the account at issue. (Stuntebeck Decl. ¶¶ 1-5.) Stuntebeck asserts that Basic Capital and Basic Capital LP solicited and retained Schnader to render legal services. Id. ¶¶ 2-4 & 9. As exhibits to his declaration, Stuntebeck attached a number of letters which detailed the transaction that he had sent to officers and directors of Basic Capital and Basic Capital LP. (Stuntebeck Decl. Exs. A, B & C.) The record shows that a number of telephone, mail, facsimile and electronic communications were made between various officers and employees of Basic Capital LP and Schnader. (Pl.'s Mem. of Law in Supp. of Resp. to Mot. to

Dismiss at unnumbered pp. 4-5; Stuntebeck Decl. ¶ 5.) Finally, the record shows that Schnader received three initial payments for its services in the form of three separate checks made by "Basic Capital Funds, an Ontario Limited Partnership by its General Partner Basic Capital Funds Inc." (Stuntebeck Decl. ¶ 8 & Exs. D, E & F.) Thus, the court finds that Schnader has met its burden of establishing sufficient minimum contacts between Basic Capital LP and Pennsylvania and that Basic Capital LP's contacts constitute minimum contacts necessary for the court to exercise personal jurisdiction over it. See Grand Entertainment, 988 F.2d at 482 (stating that "[m]ail and telephone communications sent by the defendant into the forum may count toward the minimum contacts that support jurisdiction" and that "contract negotiations with forum residents can empower a court to exercise personal jurisdiction over persons outside the forum") (citations omitted).

2. Fair Play and Substantial Justice

The second element required to find personal jurisdiction is that "the defendant's contacts with the forum State must be such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980) (citations and internal quotations omitted). The court will review several factors that evaluate the respective interests involved, including "'the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in

obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.'" Pennzoil Prods. Co. v. Colelli & Assocs., Inc., 149 F.3d 197, 205 (3d Cir. 1998) (quoting Burger King, 471 U.S. at 477).

The "burden on a defendant who wishes to show an absence of fairness or lack of substantial justice is heavy." Grand Entertainment, 988 F.2d at 482. Basic Capital LP fails to assert any grounds as to how it would be unduly burdened by litigating this action in Pennsylvania. On the other hand, the court recognizes that Schnader has an interest in obtaining relief in this action and that the court is well-suited to provide such relief. In addition, Pennsylvania has an interest in this dispute, as Schnader's principal place of business is located here. (Stuntebeck Decl. ¶ 1.) The court finds that the assertion of personal jurisdiction over Basic Capital LP will not offend traditional notions of fair play and substantial justice. Thus, the court will deny the motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(2).

III. CONCLUSION

For the foregoing reasons, the court will deny Basic Capital LP's Motion to Dismiss the Amended Complaint.

An appropriate Order follows.

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ORDER

AND NOW, TO WIT this day of September, 2000, upon consideration of defendant Basic Capital Funds, a Limited Partnership's Motion to Dismiss Plaintiff's Amended Complaint and plaintiff Schnader, Harrison, Segal & Lewis, LLP's response thereto, IT IS ORDERED that said motion is DENIED.

LOUIS C. BECHTLE, J.